Department of Finance and
Treasury Board of Canada

Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities

Prepared by:

The Crown Corporations Directorate
of the Department of Finance and
Treasury Board Secretariat

in collaboration with:

The Conference Board of Canada
and the
Canadian Centre for Management Development

The Conference Board
of Canada

CANADIAN CENTRE
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Canada

PREFACE

This Guide addresses an important aspect of corporate governance—the roles and responsibilities of the Crown corporations director. As a Guide, it presents an introductory overview of a director's role and other general information primarily intended to meet the needs of new appointees to the boards of federal Crown corporations.

The Guide explains both the key characteristics distinguishing Crown corporations from the other organizational forms used by the Government of Canada and the nature of the relationships Crown corporations have with the other parts of government.

Instead of addressing all of the director's roles and responsibilities, the Guide focuses on four primary responsibilities: establishing the corporation's strategic direction, safeguarding the corporation's resources, monitoring corporate performance, and reporting to the Crown.

We are confident this Guide will help new members of boards of directors to better appreciate the challenge and the opportunity of serving as a director of a Crown corporation.

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Introduction

The federal government establishes Crown corporations to achieve public policy aims where there is need both for a clear separation of the government from day-to-day management activity and for the use of sound commercial business practices.

One major shareholder asked a very experienced, very capable engineer who was part-owner and senior manager of a very successful privately owned construction company to become a director of a corporation. As an engineer and a successful businessman, everything was going just great. He came up to me after the first meeting and said, "I haven't the faintest idea of what is expected of me as a director of a company, and I am either going to have to brush up on it or maybe you will tell me what is expected of me. I am lost".[1]

Appointment as a director of a Crown corporation is a unique opportunity to render valuable public service to the citizens of Canada. New appointees should anticipate that serving on the board of a Crown corporation will be challenging and satisfying, but they may feel somewhat like the person described in the above quote. The responsibility for overseeing the management of a Crown corporation demands practical advice and counsel. Directors are concerned with their corporation's strategic direction, the safeguarding of its resources, the monitoring of its performance and reporting on it.

While the directors are normally removed from the day-to-day decision making of the corporation, the director's role is vitally important. The corporation's management will present information, seek advice, and request the approval of proposals from the board of directors. Each director will be called upon to exercise his or her judgement and the independence of his or her position in formulating the board's decisions to approve, reject, or request deferral of the proposals brought by management for approval.

Crown corporation directors perform a valuable public service. Corporate governance will benefit from the combined individual talents of the select group of Canadians chosen for each Crown corporation's board of directors.

Crown Corporations and Boards of Directors

As an integral part of the federal government structure, Crown corporations must be sensitive to the Crown's broad policy objectives and priorities.

The rights, privileges and powers of a Crown corporation may be prescribed or limited by its enabling legislation or by provisions of the *Financial Administration Act.*

Crown corporations play important roles in Canada's development and contribute significantly to the building and maintenance of our national identity. Throughout various periods in our history, they have acted as engines of industrial development, provided key goods and services, and assisted and strengthened the cultural fabric of the country. The varied nature of the current Crown corporation portfolio illustrates their continuing contribution to these objectives.[2]

The federal government has chosen the Crown corporation form as a means to achieve public policy objectives where there is the need for both a clear separation of the Crown from day-to-day management activities and the use of sound commercial business practices. The pursuit of public policy objectives in a manner normally associated with the efficiency of private sector firms often creates a major challenge for board members of Crown corporations. The balancing of difficult and competing concerns often requires trade-offs of these objectives.

What is a Crown corporation?

Crown corporations are corporations wholly owned by the Crown and most are agents of the Crown.[3] Each Crown corporation's enabling legislation, whether by a special Act of Parliament or by articles of incorporation under the *Canada Business Corporations Act*, sets out in broad terms the Crown corporation's mandate, powers and objectives. Part X of the *Financial Administration Act* (FAA) outlines the control and accountability framework for Crown corporations. In combination, this framework and the enabling legislation form the government's basic management structure for each Crown corporation.

Each Crown corporation is ultimately accountable, through a minister normally referred to as the responsible minister, to Parliament for the conduct of its affairs.[4] The minister, within the collective responsibility of Cabinet, represents the Crown. It is through the responsible minister that the Crown corporation reports to the government and to Parliament on its plans and its performance.

As an integral part of the federal government structure, Crown corporations must be sensitive to the government's broad policy objectives and priorities. These may include such policies as official languages, employment equity and, particularly in times of economic downturn, the priority of fiscal restraint.

How are Crown corporations created?

The majority of parent Crown corporations are created by Parliament through special Acts;[5] others have been incorporated under company legislation such as the *Canada Business Corporations Act* (CBCA).[6] The rights, privileges and powers of a Crown corporation may be prescribed or limited by its enabling legislation or by provisions of the FAA.

In order to better understand the context for the creation of a particular Crown corporation, its public policy mandate and the framework within which it operates, board members are advised to read the legislation that created it, any legislative Acts applicable to the corporation,[7] the corporation's general by-laws and Part X of the *Financial Administration Act*.

Effective boards of directors are critical to the good management of corporations.

Through the power conferred on them, boards of directors oversee the management of the businesses, activities and other affairs of the corporation.

The different types of Crown corporations

Crown corporations operate in many different sectors of the economy, vary greatly in terms of relative size, often serve different public policy purposes, and place different demands on the Crown for financial support.

The FAA categorizes Crown corporations on the basis of their dependency on appropriations from Parliament for their funding. Corporations operating in commercial and frequently competitive environments are expected to earn profits and provide a return on the public's investment. These corporations are normally not dependent on government appropriations and are listed in Schedule III, Part II of the FAA. Examples include the Canadian National Railway Company and the Canada Post Corporation. Other corporations that depend in part on appropriations for operating purposes, or for equity for lending purposes, are listed in Schedule III, Part I of the FAA. Examples include the Canada Mortgage and Housing Corporation, the National Gallery of Canada, the St. Lawrence Seaway Authority and the Farm Credit Corporation.

In addition, certain other Crown corporations are not scheduled under the *Financial Administration Act* and are not subject to the control and accountability provisions outlined in Divisions I to IV of Part X. These corporations generally have a public policy mandate of a cultural nature and depend on appropriations from the Crown. These include the Canadian Broadcasting Corporation and the National Arts Centre Corporation. The exempt corporations follow the control and accountability regime outlined in their specific legislation and many of them have chosen to adopt a number of the key accountability provisions of Part X of the FAA.

The role of boards of directors

While many similarities exist among the roles and responsibilities of the boards of directors of all corporations, membership on the board of a federal Crown corporation presents unique challenges. These challenges result from a need for heightened sensitivity to the corporation's public policy objectives and its connection to the Crown.

Effective boards of directors are critical to the good management of corporations. In the public sector, a board of directors helps to separate ownership from day-to-day management by providing a key link between the Crown and the executive officers. A strong board of directors is essential if the corporation is to fulfil the objectives established for it.

Through the power conferred on them, boards of directors oversee the management of the businesses, activities and other affairs of the corporation.[8] Directors exercise their powers and fulfil their obligations by becoming familiar with the corporation and its management, by establishing the corporation's strategic direction, by monitoring performance, and by reporting to the Crown. By entrusting operational decisions to the executive officers of the corporation, directors normally do not involve themselves in day-to-day management.

Boards of directors of Crown corporations must be sensitive to the mandate of the corporation as expressed in the authorities granted to it by Parliament and to the fact that the corporation is part of the federal government. In short, boards of directors of Crown corporations oversee the corporation on the Crown's behalf by holding management accountable for the company's performance, its long-term viability and the achievement of its objectives.

The Federal Government and Crown Corporations

For new directors without previous government experience, the relationship between Crown corporations and the government is often confusing. To an outsider, the many different parts of the government and the role each plays with respect to the Crown corporation are not self-evident.[9]

Within the Canadian system of responsible government, ministers are individually and collectively responsible to Parliament for the provision and conduct of government. In conducting its affairs, the government has certain powers and responsibilities with respect to Crown corporations. These powers and responsibilities are exercised in a manner that recognizes the varying degrees of autonomy and independence from the government conferred on Crown corporations according to their constituent Acts.

While many are involved in the administration of federal Crown corporations, the board of directors, through the chairperson, is accountable to the responsible minister and, ultimately, through the minister to Parliament. ►

The role of Parliament

Parliament has an important role with respect to Crown corporations. It legislates with respect to the creation, dissolution or privatization of a parent Crown corporation. Parliament also legislates the general governance of Crown corporations and the allocation of public funds to individual Crown corporations.

Important documents relating to the operations and the performance of each Crown corporation are tabled in both Houses of Parliament. These documents include annual reports and summaries of corporate plans and budgets. As well, the President of the Treasury Board annually tables in Parliament a consolidated report on all Crown corporations entitled *Crown Corporations and Other Corporate Interests of Canada*. Any report received by Parliament may be referred to the appropriate parliamentary committee.

The role of the Governor in Council

Executive authority in the Canadian government is formally vested in the Queen and delegated to the Governor General acting by and with the advice of the Queen's Privy Council. This formal executive authority is conferred by the statutes on the "Governor in Council". Under accepted constitutional practice, this Council generally functions through an informal, non-statutory committee, composed of members of "the Cabinet". The Cabinet comprises the Prime Minister and the other ministers of the Crown appointed by the Governor General to form the Government or Executive of the day. Cabinet has overall responsibility for the formulation of the government's priorities and policies.

Crown corporation annual corporate plans require Governor-in-Council (GiC) approval prior to implementation. This approval represents the Cabinet's endorsement of the responsible minister's recommendation of the particular Crown corporation's business plan.

Appointments to key positions in Crown corporations require GiC approval. In general, directors are appointed by the minister with the approval of the Governor in Council.[10] Officer-directors are appointed by the Governor in Council.[11] The GiC fixes the rate of remuneration for the directors, the chairperson, and the chief executive officer (CEO) of each parent Crown corporation. Annually, the board of directors evaluates the performance of its CEO and makes a recommendation to the minister on the rate of remuneration for the following year and on any performance compensation. The minister then forwards the recommendation to the GiC for consideration and approval.

The roles of the Prime Minister's Office and the Privy Council Office

The Prime Minister's Office (PMO) and the Privy Council Office (PCO) each have a role in GiC appointments. The PMO is actively involved with the appointment of chairpersons, CEOs and directors of Crown corporations. The PMO provides political advice to the Prime Minister on appointments to be made on his or her recommendation. Ministers consult with the PMO when developing their recommendations on GiC appointments. The PCO provides operational advice to the Prime Minister on these appointments by looking after the technical and administrative requirements. The PCO also provides advice on the classification of positions and the associated salary.

The Governor in Council, the President of the Treasury Board and the Minister of Finance approve the strategic direction and financing of Crown corporations.

Except as otherwise provided by statute, directors are usually appointed to hold office "during pleasure" for a term specified in the instrument of appointment (normally through Orders in Council). "During pleasure" means at the discretion of the Crown.[12]

The role of the responsible minister

The responsible minister functions as the link between the corporation and both the Governor in Council and Parliament.

The responsible minister functions as the link between the corporation and both the Governor in Council and Parliament. By statute, or by Order in Council, the minister has the delegated responsibility to act for the Crown. It is through the minister that the Crown communicates its wishes to the corporation and the corporation is accountable to Parliament.

The major powers, duties and functions undertaken by the minister include:

- appointing or making recommendations to the GiC on the appointment of directors and auditors;
- recommending approval to the GiC of corporate plans, budgets, borrowings and payments of corporate surpluses (e.g., dividends);[13]
- tabling in Parliament of Crown corporation annual reports and summaries of corporate plans and budgets;[14]
- recommending that the GiC issue directives where necessary,[15] and tabling such directives in Parliament;[16] and
- answering questions in Parliament on matters relating to the Crown corporation.

The minister may request additional advice from his or her department on some of these matters.

The role of the Treasury Board

The Treasury Board is the statutory committee of Cabinet ministers responsible for the administration of the government's financial, human and material resources. The President of the Treasury Board is its chairperson and the Minister of Finance is a statutory member of the Board.

The Treasury Board's responsibilities vis-à-vis a Crown corporation include:

- reviewing the strategic direction of each Crown corporation as presented in its corporate plan and forwarding it to the GiC with a recommendation for approval, if appropriate;
- reviewing proposed decisions or recommendations of a financial nature made by a minister responsible for a Crown corporation;
- approving each Crown corporation's capital budget, certain transactions, and, in the case of Schedule III, Part I of the FAA corporations, their operating budgets and any amendments thereof;[17]
- approving budgetary appropriations to be put to a vote in Parliament;[18] and

- reviewing the legal framework set out in the FAA and making regulations for the general governance of Crown corporations.[19]

The President of the Treasury Board also tables in Parliament an annual report on all parent Crown corporations and other corporate interests of the Government of Canada, including information on compliance with tabling requirements for summaries and annual reports.[20]

The Crown Corporations Directorate advises the President of the Treasury Board and the Minister of Finance regarding approval of Crown corporations' corporate plans, budgets, funding requests and broad policy issues.

The role of the Minister of Finance

As the government's fiscal manager, the Minister of Finance is interested in Crown corporations, their borrowing plans and their payments to the Receiver General. In carrying out these duties, the Minister of Finance may:

- recommend that the GiC make regulations governing borrowing;[21]
- require his recommendation for the approval of any corporate plan that proposes to borrow money;[22] and
- direct any payment of surplus money (e.g., dividends) held by a corporation to the Accounts of Canada, with the concurrence of the responsible minister and the GiC.[23]

The role of the Crown Corporations Directorate

The Crown Corporations Directorate (CCD), a joint organization of the Treasury Board Secretariat and the Department of Finance, is responsible for the control and accountability framework prescribed for Crown corporations.

The CCD advises the President of the Treasury Board and the Minister of Finance regarding broad policy issues affecting Crown corporations, including their resources and activities, their objectives and performance, and approval of Crown corporation corporate plans, budgets, funding requests and borrowing plans.

The CCD assists the corporations to abide by the requirements and the spirit of this prescribed framework by providing advice and by periodically issuing guidelines on topics such as the preparation of corporate plans.[24]

Other sectors of the Program Branch of the Treasury Board Secretariat monitor the activities of the "exempt" corporations in the cultural field and the museum Crown corporations.[25]

They say the best companies have board members who ask the tough questions. In Crown corporations this is especially important because balancing public policy and commercial objectives is the toughest part of the job.[26]

The first challenge for new directors of Crown corporations is to acquire a working knowledge of their corporation's policy objectives and activities. The appropriate level of knowledge, while not as detailed as that customarily possessed by management of the corporation, should be sufficient to allow the board member to have an understanding of how major events and transactions would affect the corporation.

Establishment of a Crown corporation's strategic direction is the key role of a director. The corporate plan, once approved by the Governor in Council, represents the framework for subsequent decisions and for evaluation.

This general knowledge would include an understanding of the Crown corporation's public policy objectives, the commercial aspects of its mandate and the nature of the industry or milieu within which it operates. Directors should be sensitive to the need to balance the Crown's broad policy objectives and priorities with the corporation's commercial objectives. As a first step, directors should become familiar with the general parameters of the legislation that created their particular Crown corporation, any legislative Acts applicable to the corporation, its general by-laws, and Part X of the *Financial Administration Act*.

A more specific knowledge of the entity, how it is organized, how it is financed, its products and services, and its major suppliers and customers, is normally picked up by each board member during actual meetings of the board of directors.

In addition, most Crown corporations provide briefing packages, arrange for tours of key locations, and in some cases set up consultations with knowledgeable individuals within or outside the corporation. For most new directors, however, the experience of working on the board with the other members proves to be the most effective means of acquiring the necessary working knowledge of their corporation.

Responsibilities and duties

To fulfil their responsibility to manage the affairs of the company, boards of directors exercise judgement in four broad areas:

- establishing the corporation's strategic direction;
- safeguarding the corporation's resources;
- monitoring corporate performance; and
- reporting to the Crown.

Establishing the corporation's strategic direction

We are approaching financial maturity as a corporation, and fundamental in this progress was the advice and support we received from our board of directors in developing and approving our annual corporate plan.[27]

Involvement in the development and approval of the planned strategic direction for the corporation is likely the most important duty of the board. This activity may be spread over a number of meetings and may involve requests to management for clarification or elaboration. The exercise usually culminates in a major board decision taken once a year to approve the corporation's corporate plan.[28]

Directors of Crown corporations have a leadership role. To ensure that the most appropriate strategic direction for the corporation has been selected, board members will need to grapple with the complexities of choosing from among competing alternatives. The perspective

Safeguarding the corporation's resources is probably the most time-consuming duty of board members as all the major decisions involving the corporation's assets and their financing must be reviewed and approved by the board.

Monitoring corporate performance assists the board in formulating positions on current and upcoming decisions to be taken.

of outside directors often provides a meaningful balance to the recommendations formulated inside the corporation.

In establishing the strategic direction, the board satisfies itself that management has considered the relevant factors that could influence the future direction of the corporation. Once approved, the corporate plan is submitted to the responsible minister for consideration and recommendation to the Governor in Council. The approved corporate plan then provides a basis for many of the subsequent decisions requiring approval by the board of directors and for evaluating performance.

Safeguarding the corporation's resources

Safeguarding the corporation's resources is probably the most time-consuming duty of board members. All the major decisions involving the corporation's assets and their financing must be reviewed and approved by the board.

The board of directors approves the annual operating and capital budgets,[29] major new project proposals and borrowing requests. The annual budgets outline planned performance and the proposed allocation of the available resources among the competing priorities. Major new project proposals may include investments (e.g., the initiation of new capital projects or acquisitions) and divestitures (e.g., the sale of assets or the spinning-off of non-core business activities). Each major new project proposal may demand significant involvement of the board.

In evaluating the merits of each initiative, the board ensures that the proposals are consistent with the planned strategic direction of the corporation. Based on its deliberations, the board may suggest modifications requiring further submissions before the proposal is approved.

Monitoring the performance of the corporation

The board of directors will receive periodic reports prepared by management that outline and explain how well the corporation is performing relative to the objectives set out in the approved plan and the actual results of past years. The board may also request the CEO to provide additional information.

Regular monitoring of corporate performance assists the board in formulating positions on current and upcoming decisions to be taken. It helps directors to learn about the corporation, its management and the overall appropriateness of the corporation's strategic plan. It also alerts the board of directors to new developments inside the corporation and in its external environment. On occasion, these developments may lead to a reappraisal of the planned strategic direction.

Management reports to the board also provide the opportunity for directors to assess the quality of previous decisions "after the fact." This feedback often assists directors in their deliberations on future decisions presented to them for approval.

Reporting to the Crown

The board of directors should ensure that the information provided to the Crown is sufficient to allow an evaluation of how well the corporation has fulfilled its objectives.

The legislation governing each corporation prescribes minimum levels of information disclosure. As actual practice varies widely, the board of directors should ensure that the corporation's reporting exceeds the minimum requirements.

Reporting to the Crown is key to the evaluation of how well the Crown corporation has fulfilled its mandate.

Annually, the Crown corporation provides the minister with its corporate plan, borrowing plan, annual report, capital budget, and in some cases operating budget, including the audited financial statements. In addition, the board is at liberty throughout the year to instruct the chairperson to inform the minister of any matter it believes deserves the minister's attention.

The board of directors and its committees

Not all boards are identical. The Crown corporation's enabling legislation normally specifies the number of directors, the conditions governing their appointment, and the powers and duties of the board of directors.

Board meetings are the main forum for board members to fulfil their responsibilities. Board members should prepare well for these meetings and actively participate in them.

The chairperson provides leadership and presides over the activities of the board. He or she is the formal link between the minister and the board. Normally, the chairperson and the CEO establish a practice of maintaining ongoing contact with the minister and his or her office. The CEO also serves on the board as a member and is the board's primary link with the management of the corporation.

The board may create committees to perform assigned tasks. Results of committee deliberations usually flow through to regular board meetings where they may be ratified. The requirement for and use of committees varies widely among Crown corporations. Committees commonly created by boards are executive committees and audit committees. Executive committees generally handle business that must be dealt with between board meetings.

The FAA requires that most Crown corporations establish an audit committee.[30] Audit is an important aspect of the FAA, Part X legislative framework for Crown corporations. Audit committees oversee the internal audits required by the legislation.[31] Audit committees also review and advise the board of directors on the corporation's financial statements, the annual auditor's report[32] and the plan and reports with respect to special examinations. Special examinations are a form of value-for-money audit on the corporation's management systems and are required at least once every five years.[33] The external auditor is entitled to attend all meetings of the audit committee and may also request that meetings be called. For many of the Crown corporations, the Auditor General of Canada is the annual external auditor and the special examiner.[34]

Other committees are established on the basis of need as perceived by the board. For example, in a number of larger Crown corporations, a compensation committee exists to deal with salary recommendations, the determination of benefits for the officers of the corporation, and to evaluate the performance of the CEO.

Board meetings

Board meetings are the main forum for board members to fulfil their responsibilities. Board members should prepare well for these meetings and actively participate in them. These meetings provide an opportunity for directors to receive information, to develop their understanding of the important issues, and to influence the decisions of the corporation.

Crown corporation board meetings are convened several times a year. For corporations that have offices across the country, board meetings may be held occasionally at these locations. The draft agenda, minutes of previous meetings and the relevant information relating to matters requiring board approval are usually sent to directors in advance. Directors may request that items be

In addition to concerns about conflict of interest, directors of public sector corporations should ensure that any partisan political activity they may engage in does not impair the conduct of their duties as a director or the public perception of their position.

The frankness of the discussions at board meetings requires that both their nature and their content be kept confidential. Formal communication of any decisions by the board is normally the responsibility of the chairperson or the CEO.

added to the agenda either before or at the meeting.

Normally, board meetings begin with a review and consideration of any outstanding matters arising from the previous meeting's minutes. Regular agenda items may include progress reports from the CEO, reports from board committees and reviews of the corporation's financial position and operating results. Other items on the agenda often relate to policy decisions, strategy, budgets, key personnel decisions and major current projects. Senior officers of the corporation are sometimes invited to these meetings to present and explain specific issues.

The chairperson will invite and lead the discussion on most agenda items. Directors are expected to speak their minds. They may seek clarification of information presented to them and may request any other information they consider appropriate to their needs. When a consensus cannot be reached, the chairperson may defer the issue or put it to a vote. A director has the prerogative to request that an item be deferred to another board meeting if additional information is needed.[35] If a director chooses to dissent or to abstain from a vote, he or she should ensure that the minutes record his or her position.[36]

Privileged communications

Thou shalt keep internal discussions confidential: other directors, management and staff expect a high degree of confidentiality about board discussions and other corporate matters. In order to allow full, open discussion, keep this in mind.[37]

Confidentiality is an issue of concern to boards of directors. It is customary to assume that the affairs of the corporation are deliberated in confidence and that their disclosure only follows from authorized decisions and according to agreed procedures (e.g., speeches, press releases and briefings). Sensitive information in many areas such as human resources, corporate strategy and policy could cause damage if inappropriately released to the public. The frankness of the discussions at board meetings requires that both their nature and their content be kept confidential. Colleagues are more likely to risk voicing their concerns and to pose difficult questions if they trust that the confidentiality of these discussions will be respected. Formal communication of any decisions by the board is normally the responsibility of the chairperson or the CEO.

Constraints on directors

Directors of Crown corporations must, at all times, be sensitive to potential conflict-of-interest situations. A conflict of interest could exist when a board member uses corporate property for his or her own purposes or derives a personal benefit from an impending decision of the board. If the possibility of such a situation occurs, the FAA requires that the individual board member explicitly disclose the nature and extent of his or her interest to the chairperson. Time permitting, this would normally be done in advance and in writing. Once this is done, the board member would be expected to refrain from voting on the matter under consideration.[38] A declaration of the disclosure should normally be entered in the minutes of a board meeting.

In addition to concerns about conflict of interest, directors of public sector corporations should ensure that any partisan political activity they may engage in does not impair the conduct of their duties as a director or the public perception of their position.

To avoid possible embarrassment for the minister and the Crown, directors are cautioned about public statements concerning their Crown corporation. Depending on the circumstances, the spokesperson for the corporation is usually the CEO, the chairperson of the board of directors or the minister. Before an individual board member acts as a spokesperson, he or she should first receive clearance from the chairperson or the board of directors.

Directive power

There are cases where the Governor in Council, acting in the national interest, can direct a Crown corporation to do something that its commercially oriented board members would not normally do. Although this prerogative is there, and it is pristine in its concept, it is rarely used.[39]

In recognition of the exposure to potential liabilities related to their responsibilities and obligations, Part X of the FAA provides directors of Crown corporations with indemnification protection.

There are rare occasions where the Crown perceives a need to direct a corporation to perform an action deemed to be in the public interest which the corporation would not normally do in the context of its regular business.[40] The FAA has provided for this eventuality by including a provision allowing the minister to give a directive to the corporation. Before issuing a directive, the minister consults with the board of directors and obtains the approval of the Governor in Council. Directives are expected to be tabled in Parliament shortly after issue. Once the directive has been delivered by the minister to the board of directors, the board is charged with the responsibility of ensuring that the directive is carried out promptly and efficiently.[41] Because a directive is deemed to be in the best interests of the corporation, the board of directors is absolved of any potential consequences regarding compliance with it.

Extent of a director's liability

A Crown corporation operates within a certain framework, that is to say, the FAA. Every major decision that either goes beyond the corporate plan or contemplates the purchase of shares in another company has to go back to the Crown for an Order in Council. With this measure of control, the directors are much less exposed.[42]

Members of boards of directors are exposed to potential liabilities related to their responsibilities and obligations as outlined in their Crown corporation's enabling legislation and in other statutes.[43] A director of a Crown corporation is expected to exercise the care, due diligence and skill that a reasonably prudent person would in comparable circumstances. In carrying out his or her duties, each director is asked to exercise good business judgement based on common sense and his or her personal experience. Various Canadian laws place responsibility on directors of both public and private corporations to ensure that certain public goals are respected by their corporation (e.g., environmental protection, employment standards or tax deductions).

In recognition of this exposure to liability, the accountability framework set out in Part X of the FAA for federal Crown corporations provides the director of a Crown corporation with indemnification protection for the financial costs of any liability that might be realized, provided that the director:

- acted honestly and in good faith, with a view to the best interests of the Crown corporation; and
- in the case of any criminal or administrative action or proceeding enforced by a monetary penalty, believed on reasonable grounds that the conduct was lawful.[44]

For further information

This introductory Guide sets out basic elements of the director's role from the perspective of the Crown Corporations Directorate. Individual directors are encouraged to seek clarification of their role from their particular Crown corporation and through the following documents:

- Part X of the FAA;
- their Crown corporation's enabling legislation, charter and by-laws; and
- the materials cited in the list of references that follows this text.

Users of this Guide are reminded that its purpose is to present information of interest primarily to newly appointed directors of federal Crown corporations and that, as such, it has no official or legal sanction nor does it constitute a legal document.

Endnotes

1 David Golden, former Chairman of the Board of Telesat Canada.

2 For an overview of the government's portfolio of Crown corporations, refer to the President of the Treasury Board's Annual Report to Parliament, *Crown Corporations and Other Corporate Interests of Canada*.

3 For implications of Crown agency status, see sections 96 to 101 of the *Financial Administration Act* (FAA) and the Crown Corporation Borrowing Regulations.

4 FAA, Part X, section 88 defines this minister as the "appropriate Minister".

5 The FAA defines a parent Crown corporation as a corporation that is wholly owned directly by the Crown, but does not include a departmental corporation.

6 In 1992, of the 54 parent Crown corporations, 44 corporations were created by special Acts of Parliament.

7 For example, the Canada Mortgage and Housing Corporation exercises and performs all rights, powers, duties, liabilities and functions of the Minister responsible under the National Housing Act (with the exception of the authority of the Minister under the Act to make payments out of the Consolidated Revenue Fund).

8 FAA, Part X, section 109 defines the responsibilities of the board of directors.

9 For more information on the functioning of the various government entities, see John McMenemy, *The Language of Canadian Politics* (Wiley Publishers of Canada Limited, 1980).

10 FAA, Part X, subsection 105(1) defines how directors other than officer-directors are appointed.

11 FAA, Part X, subsection 105(5) defines how officer-directors are appointed.

12 FAA, Part X, subsection 105(4) defines continuation in office.

13 Each Crown corporation may be required to annually submit a corporate plan, an operating budget, a capital budget, a summary of the plan or budget(s) and a dividend proposal to the appropriate Minister under the provisions of the FAA, Part X, subsections 122(1), 123(1), 124(1), 125(1), and 130.1.

14 FAA, Part X, subsections 125(4) and 150(1) indicate that the appropriate Minister shall cause a copy of every summary and annual report to be laid before Parliament.

15 FAA, Part X, subsection 89(1) indicates that the Governor in Council, on the recommendation of the appropriate Minister, may give a directive to a parent Crown corporation.

16 FAA, Part X, subsection 89(4) requires the appropriate Minister to cause a copy of any directive given to a parent Crown corporation to be laid before each house of Parliament.

17 FAA, Part X, subsections 123(1), (4), (5); and subsections 124(1), (3), (6), (8) define Treasury Board responsibilities vis-à-vis the Crown corporation operating or capital budget approval process.

18 FAA, Part I, section 7 provides information on the financial management responsibilities of Treasury Board.

19 Part X of the FAA sets out the control and accountability regime for Crown corporations.

20 FAA, Part X, section 151 states that the President of the Treasury Board shall lay before Parliament an annual consolidated report on the business and activities of all parent Crown corporations. As well, FAA, Part X, section 152 states that the President shall also lay before Parliament a report on the tabling of corporate plan and budget summaries, as well as on the tabling of Crown corporation annual reports before Parliament.

21 FAA, Part X, subsection 127(4) defines the role of the Governor in Council vis-à-vis Crown corporation borrowing.

22 FAA, Part X, subsection 127(2) indicates that the recommendation of the Minister of Finance in addition to that of the appropriate Minister may be required regarding a Crown corporation's borrowing plan.

23 FAA, Part X, sections 130, 130.1 and 130.2 set out the surpluses and dividends provisions.

24 FAA, Part X, section 126 indicates that Treasury Board may make regulations prescribing the form in which corporate plans, budgets, summaries or amendments shall be prepared.

25 FAA, Part X, subsection 85(1) lists the exempted Crown corporations. These corporations are exempted from scheduling in the FAA and are exempt from the provisions of Divisions I to IV of Part X of the FAA.

26 Annette Verschuren, member of the Board of Directors of Cape Breton Development Corporation, and President, Michaels Stores Canada.

27 Donald Lander, Chairman and Chief Executive Officer, Canada Post Corporation.

28 FAA, Part X, section 122 describes the scope, contents and form of the corporate plan.

29 FAA, Part X, sections 123 and 124 describe the scope and form of the operating and capital budgets.

30 FAA, Part X, section 148 describes audit committees and specifies that they are required for Crown corporations with four or more directors.

31 FAA, Part X, subsection 131(3) requires that internal audits be conducted.

32 FAA, Part X, section 132 requires an annual auditor's report on the financial statements.

33 FAA, Part X, sections 138 to 141 describe special examinations. The examiner is required to submit a report to the board of directors of his findings based on an examination of the management systems and practices of the corporation.

34 FAA, Part X, sections 134, 135 and 142 describe the selection and appointment process for external auditors. The general rule establishes that the Auditor General shall be the auditor or joint auditor of parent corporations named in Part I of Schedule III and is eligible to be an auditor of corporations named in Part II of Schedule III.

35 The duty of diligence is discussed in Chapter 8, *Duties and Responsibilities of Directors in Canada*, sixth edition (CCH Canadian Limited, 1987).

36 FAA, Part X, sections 111 and 112 provide information on directors' right of dissent.

37 Derek Oland, President and Chief Operating Officer, Moosehead Breweries (a former member of the board of directors of a Crown corporation).

38 Details on disclosures of conflict can be found in the FAA, Part X, sections 116–118.

39 Hugh Mullington, former President and Chief Executive Officer, Canadian Commercial Corporation.

40 Corporations listed in Schedule III of the FAA are subject to GiC directives. The enabling legislation of some corporations also contains provisions for ministerial directives.

41 FAA, Part X, section 89.1 requires that a directive be implemented in a prompt and efficient manner and states that it is deemed to be in the best interests of the corporation for the board to comply with the directive.

42 Claude Taylor, former Chairman and Chief Executive Officer, Air Canada (a former Crown corporation).

43 For a detailed description, refer to *Duties and Responsibilities of Directors in Canada*, sixth edition (CCH Canadian Limited, 1987).

44 FAA, Part X, section 119 sets out the indemnification provisions.

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The Crown Corporations Directorate

The Crown Corporations Directorate is the focal point through which the Government of Canada co-ordinates the management of its corporate interests. By reporting jointly to the Treasury Board Secretariat and the Department of Finance, the Directorate ensures that Canada's corporate interests are integrated into the government's overall policy agenda and program expenditure system. This is chiefly accomplished by overseeing the implementation of the Crown corporation control and accountability framework set out in Part X of the *Financial Administration Act*.

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